

**SETTLEMENT AGREEMENT BETWEEN**  
**THE MISSOURI REAL ESTATE COMMISSION AND**  
**DREW MITCHEM CLARY**

Drew Mitchem Clary ("Clary"), enters into this Settlement Agreement with the Missouri Real Estate Commission for the purpose of resolving all existing disputes in the matter of Clary engaging in conduct requiring licensure as a real estate broker without possessing the appropriate licensure issued by the MREC, and the associated civil penalties authorized under § 339.205.<sup>1</sup> The MREC and Clary jointly stipulate and agree that a final disposition of this matter may be effectuated as described below pursuant to § 339.205, RSMo.

Clary acknowledges that he understands the various rights and privileges afforded him by law, including the right to a hearing of the charges against him; the right to appear and be represented by legal counsel; the right to have all charges proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing against him at the hearing; the right to present evidence on his behalf at the hearing; the right to a decision upon the record of the hearing by a fair and impartial administrative hearing commissioner concerning the charges pending against him; the right to a ruling on questions of law by the Administrative Hearing Commission; the right to a

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<sup>1</sup> All statutory citations are to the 2016 Revised Statutes of Missouri as amended unless otherwise noted.

disciplinary hearing before the MREC at which time Clary may present evidence in mitigation of discipline; the right to a claim for attorney fees and expenses; and the right to obtain judicial review of the decisions of the Administrative Hearing Commission and the MREC.

Being aware of these rights provided to him by law, Clary knowingly and voluntarily waives each and every one of these rights and freely enters into this Settlement Agreement and agrees to abide by the terms of this document as they pertain to him.

Clary acknowledges that he has received a copy of documents that were the basis upon which the MREC determined there was cause for discipline, along with citations to law and/or regulations the MREC believes were violated. Clary stipulates that the factual allegations contained in this Settlement Agreement are true and stipulate with the MREC that he is subject to this action by the MREC in accordance with the relevant provisions of Chapter 621, RSMo, and §§ 339.010 to 339.180 and §§ 339.710 to 339.855, RSMo, as amended.

The parties stipulate and agree that the civil penalty order agreed to by the MREC and Clary in Part II herein is based only on the agreement set out in Part I herein. Clary understands that the MREC may take further action against him based on facts or conduct not specifically mentioned in this document that are either now known to the MREC or may be discovered.

**I.**  
**Joint Stipulation of Facts and Conclusions of Law**

Based upon the foregoing, the MREC and Clary herein jointly stipulate to the following:

1. The MREC is an agency of the State of Missouri, created and established pursuant to Section 339.120, RSMo, for the purpose of executing and enforcing the provisions of §§ 339.010 through 339.205, and §§ 330.710 through 339.855 RSMo, Real Estate Agents, Brokers, Appraisers, and Escrow Agents.
2. Jurisdiction and venue are proper before the Administrative Hearing Commission pursuant to § 339.200.1(1), RSMo.
3. Drew Mitchem Clary in an individual residing in St. Louis, Missouri.
4. Clary is licensed by the MREC as a real estate salesperson, license no. 2015003640.

**Applicable Law**

5. Section 339.010.1, RSMo, states in part:

A "real estate broker" is any person, partnership, limited partnership, limited liability company, association, professional corporation, or corporation, foreign or domestic who, for another, and for a compensation or valuable consideration, does, or attempts to do, any or all of the following:

- (1) Sells, exchanges, purchases, rents, or leases real estate;

(2) Offers to sell, exchange, purchase, rent or lease real estate;

(3) Negotiates or offers or agrees to negotiate the sale, exchange, purchase, rental or leasing of real estate;

\* \* \*

(4) Lists or offers or agrees to list real estate for sale, lease, rental or exchange;

\* \* \*

(7) Assists or directs in the procuring of prospects, calculated to result in the sale, exchange, leasing or rental of real estate[.]

(8) Assists or directs in the negotiation of any transaction calculated or intended to result in the sale, exchange, leasing or rental of real estate;

\* \* \*

(10) Performs any of the foregoing acts on behalf of the owner of real estate, or interest therein, or improvements affixed thereon, for compensation.

6. Section 339.010.2, RSMo, states in part:  
A "real estate salesperson" is any person, partnership, limited partnership, limited liability company, association, professional corporation, or corporation, domestic or foreign who for a compensation or valuable consideration becomes associated, either as an independent contractor or employee, either directly or indirectly, with a real estate broker to do any of the things above mentioned.
7. Section 339.200, RSMo, states in part:

1. It shall be unlawful for any person not holding the required license from the commission to perform any act for which a license is required by sections 339.010 to 339.180 and sections 339.710 to 339.860. The commission may cause a complaint to be filed with the administrative hearing commission, as provided in chapter 621, against any unlicensed person who:

(1) Engages in or offers to perform any act for which a license is required by sections 339.010 to 339.180 and sections 339.710 to 339.860;

\* \* \*

3. If the commission files a complaint with the administrative hearing commission, the proceedings shall be conducted in accordance with the provisions of chapter 621. Upon a finding by the administrative hearing commission that the grounds provided in subsection 1 of this section for action are met, the commission may, either singularly or in combination with other provisions of this chapter, impose a civil penalty against the person named in the complaint in an amount not to exceed the limit authorized by section 339.205.

8. Section 339.205, RSMo, states in part:

1. In actions against unlicensed persons or disciplinary actions against licensed persons, the commission may issue an order imposing a civil penalty. Such penalty shall not be imposed until the findings of facts and conclusions of law by the administrative hearing commission have been delivered to the commission in accordance with section 621.110. Further, no civil penalty shall be assessed until a formal meeting and vote by the board has been taken to impose such a penalty.

\* \* \*

6. Any offer of settlement to resolve a civil penalty under this section shall be in writing, state that an action for imposition of a civil penalty may be initiated by the attorney general representing the commission under this section, and identify any dollar amount as an offer of settlement, which shall be negotiated in good faith through conference, conciliation, and persuasion.

### **Failure to Renew License**

9. In or about the months of September, 2016 through March, 2017, Clary was employed as a salesperson with the Intelica Commercial Real Estate Company in Creve Coeur, Missouri.

10. Clary's real estate salesperson's license expired on September 30, 2016 for failure to renew timely.

11. Clary's real estate salesperson's license was renewed on March 27, 2017, after the full payment of the required delinquent fee.

### **Unlicensed Activity**

12. Between September 30, 2016, and March 27, 2017, Clary engaged in activity requiring a salesperson's license issued by the MREC, during the time his real estate salesperson's license was expired. Clary's unlicensed activity included acting in the capacity of a real estate salesperson in the following transactions for compensation:

- (1) Lease agreement for the properties located at 12101 and 12125 Woodcrest Executive Drive, St. Louis, Missouri 63141. On March 21, 2017, Clary was paid a commission totaling \$1,460.63.
- (2) Lease agreement for the property located at 338-334 Festus Centre Drive, Festus, Missouri 63028. On March 29, 2017, Clary was paid a commission totaling \$1,357.40.
- (3) Lease agreement for the property located at 338-334 Festus Centre Drive, Festus, Missouri 63028. On March 29, 2017, Clary was paid a commission totaling \$211.61.
- (4) Closing statement, contract for sale, exclusive listing agreement for the property located at 12502 Lusher Road, Spanish Lake, Missouri 63138. On March 21, 2017, Clary was paid a commission totaling \$4,455.00.
- (5) Closing statement, contract for sale, exclusive right to sell for the property located at 11710 and 11714 St. Charles Rock Road, Bridgton, Missouri 63044. On October 7, 2016, Clary was paid a commission totaling \$7,166.25.
- (6) Lease Agreement and exclusive agency agreement for the property located at 14523 Manchester Road, Manchester, Missouri

63011. On November 8, 2016 Clary was paid a commission totaling \$4,102.33

13. Clary's involvement in transactions (1), (2), (3), and (6), above, constitutes the lease, rent, or listing of real estate, or an offer to lease, rent, or list real estate; and assisting or directing in the procuring of prospects, or the negotiation of transactions, calculated or intended to result in the leasing or rental of real estate; for compensation without a real estate license, in violation of § 339.200.1.

14. Clary's involvement in transactions (4) and (5), above, constitutes the sale, exchange, purchase, or listing of real estate, or an offer to sell, exchange, purchase, or list real estate; and assisting or directing in the procuring of prospects, or the negotiation of transactions, calculated or intended to result in the sale, exchange or purchase of real estate; for compensation without a real estate license, in violation of § 339.200.1.

15. As a result of the conduct set forth above, Clary is subject to civil penalties in the amount of \$1,000.00 for continuing violations of the applicable statutes stated above.

## II. **Joint Agreed Disciplinary Order**



Based on the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the MREC in this matter under the authority of §§ 339.205, RSMo, and 621.110, RSMo.

16. **Civil Penalty.** Clary shall be subject to, and shall pay, a civil penalty to the Missouri Real Estate Commission in the amount of \$1,000.00, due to be paid in full within thirty days of receiving this fully executed settlement agreement.

17. Clary shall make payment to the Missouri Real Estate Commission, 3605 Missouri Boulevard, P.O. Box 1339, Jefferson City, MO 65102-1339.

18. This Settlement Agreement does not bind the MREC or restrict the remedies available to it concerning any future violations by Clary pursuant to §§ 339.010 to 339.180 and §§ 339.710 to 339.855, RSMo, as amended, or the regulations promulgated thereunder, or of the terms and conditions of this Settlement Agreement.

19. This Settlement Agreement does not bind the MREC or restrict the remedies available to it concerning facts or conduct not specifically mentioned in this Settlement Agreement that are either now known to the MREC or may be discovered.

20. Each party agrees to pay all their own fees and expenses incurred as a result of this case, its litigation, and/or its settlement.

21. The terms of this Settlement Agreement are contractual, legally enforceable, and binding, not merely recital. Except as otherwise contained herein, neither this Settlement Agreement nor any of its provisions may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.

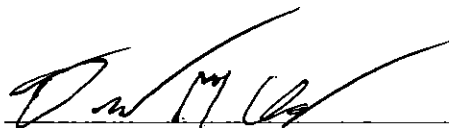
22. The parties to this Settlement Agreement understand that the MREC will maintain this Settlement Agreement as an open record of the MREC as required by Chapters 324, 339, and 610, RSMo, as amended.

23. Clary, together with his partners, officers, members managers, heirs, assigns, agents, employees, representatives and attorneys, do hereby waive, release, acquit and forever discharge the MREC, its respective members, employees, agents and attorneys including former members, employees, agents and attorneys, of, or from any liability, claim, actions, causes of action, fees, costs, expenses and compensation, including, but not limited to, any claim for attorney's fees and expenses, whether or not now known or contemplated, including, but not limited to, any claims pursuant to § 536.087, RSMo, as amended, or any claim arising under 42 U.S.C. § 1983, which now or in the future may be based upon, arise out of, or relate to any of the matters raised in this case or its litigation or from the negotiation or execution of this Settlement

Agreement. The parties acknowledge that this paragraph is severable from the remaining portions of the Settlement Agreement in that it survives in perpetuity even in the event that any court or administrative tribunal deems this agreement or any portion thereof void or unenforceable.

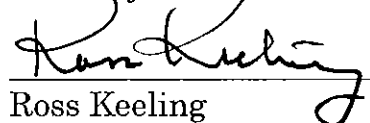
RESPONDENT

MISSOURI REAL ESTATE  
COMMISSION

  
Drew Mitchem Clary      1-3-19  
Date

By:  01-14-19  
Terry Moore,      Date  
Executive Director

JOSHUA D. HAWLEY  
Attorney General

 1-7-2019  
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*Attorneys for the MREC*